

GEORGENE E. RIECK
WILLIAM L. RIECK

IBLA 82-1273

Decided September 19, 1983

Appeal from decision of the Area Manager, Redding District Office, Bureau of Land Management, dismissing protests of grant of rights-of-way CA-12429 and CA-12441.

Affirmed.

1. Water and Water Rights: Generally -- Water and Water Rights: State Laws

When considering applications for right-of-way privileges, the Department of the Interior has no authority to determine questions of control and appropriation of water rights as between private parties, as such questions are exclusively matters of state law.

2. Federal Land Policy and Management Act of 1976: Generally -- Federal Land Policy and Management Act of 1976: Rights-of-Way

The standard of review in the case of right-of-way applications for domestic water pipelines is whether the decision demonstrates a reasoned analysis of the factors involved, with due regard for the public interest. The burden is upon the appellant to establish reversible error in the decision appealed from.

APPEARANCES: Georgene E. and William L. Rieck, pro sese.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Georgene E. and William L. Rieck, appeal from the decision of the Area Manager, Redding District Office, Bureau of Land Management (BLM), dated July 30, 1982, which dismissed their July 7, 1982, protest of the proposed

grant of rights-of-way for a water pipeline and ditch to Gerald B. Troxell (CA-12439) and Elouise J. Shuffleton and others (CA-12441).

In a timely filed notice of appeal appellants state:

The primary basis for opposing the issuance of this Right-of-Way across public land, is the failure of the District Office to impose a condition precedent that appropriative water rights be obtained before the applicant be permitted to enter and divert water from public land.

The Right-of-Way is for the purpose of entering onto B.L.M. land to divert a natural watercourse onto land owned by the applicants and others. Under California law, no person can divert water from a stream unless they have established a right to the use of that water. The applicants in this case have no legal rights to the water in question. They are not riparian land owners and they are not presently holders of any appropriative rights. [Emphasis in original.]

Appellants also state that they would oppose any attempt by the applicants to obtain appropriative water rights from the State of California.

On March 3, and March 13, 1982, Gerald B. Troxell and Elouise J. Shuffleton, respectively, filed right-of-way applications CA-12439 and CA-12441 for the use and maintenance of an existing water pipeline and ditch across public lands. The applications, filed pursuant to section 501(a) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1761(a) (1976), requested the use of public land in the SW 1/4 sec. 32, T. 35 N., R. 1 E., Mount Diablo meridian, Shasta County, California, to divert and transport water across public land to private property for domestic purposes. The record reflects that the ditch and pipeline are currently in use.

The proposed BLM decision granting rights-of-way to applicants Troxell and Shuffleton was issued subject to several conditions one of which states that, "[t]he holder is required to obtain an appropriative water right from the State of California within a reasonable period of time, which will be determined by the Authorized Officer. If State water rights are not obtained within this time, this grant is subject to cancellation."

[1] We note that the proposed BLM decisions granting applicants' rights-of-way are subject to cancellation if the stated conditions go unmet. Appellants contend that the applicants have no right to divert water from a stream unless that right has been established by the State Water Resources Control Board. In Broken H. Ranch Co., 33 IBLA 386, 389 (1978), the Board held that the Department will not approve any application for a water pipeline right-of-way if it is determined that the applicant has no existing line right-of-way if it is determined that the applicant has no existing right to the water which he proposes to convey. However, in the instant case the applicants assert that they are successors in interest to appropriations of water from Johnson Creek. A letter of April 14, 1982, from the State Water Resources Control Board accompanied by copies of notices of water

appropriation recorded in 1883 and 1914 offers some support for this contention. When considering an application for determination of right-of-way privileges, the Department of the Interior has no power to determine questions of control and appropriation of water rights as between private parties, as such questions are exclusively matters of State law. East Canyon Irrigation Co., 47 IBLA 155 (1980); Broken H. Ranch Co., supra. Thus, BLM has appropriately deferred to the State on the adjudication of applicants' water rights.

[2] The standard of review used by the Board in determining the propriety of a right-of-way grant is whether the decision demonstrates a reasoned analysis of the factors involved, with due regard for the public interest. A decision by BLM, made in exercise of its discretion, will be affirmed in the absence of sufficient reason to disturb it. East Canyon Irrigation Co., supra; Stanley S. Leach, 35 IBLA 53 (1978). In the absence of evidence that the applicants do not have the right to appropriate water which they are presently using, the decision of BLM granting the right-of-way for the existing ditch and pipeline across public lands, conditioned upon proof by applicants of their right to appropriate the water, will be affirmed.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

C. Randall Grant, Jr.
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Franklin D. Arness
Administrative Judge
Alternate Member

